

EXECUTION

GUARANTEE

issued by

NQABA FINANCE 1 SECURITY SPV (PROPRIETARY) LIMITED

(the "Security SPV")

in favour of

**THE SECURED CREDITORS in terms of the asset-backed note programme by
NQABA FINANCE 1 (PROPRIETARY) LIMITED**

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1. Introduction

- 1.1 The Security SPV has been established for the purpose of holding and realising security for the benefit of Secured Creditors in respect of the obligations of the Issuer to each of the Secured Creditors in terms of the Transaction Documents.
- 1.2 In order to give effect to the principles set out in clause 1.1 above, the Security SPV shall:
 - 1.2.1 guarantee to Secured Creditors on the terms set out in this Guarantee, the payment of their claims on the occurrence of an Event of Default;
 - 1.2.2 obtain and hold the Issuer Indemnity; and
 - 1.2.3 if an Event of Default occurs:
 - 1.2.3.1 claim from the Issuer in terms of the Issuer Indemnity;
 - 1.2.3.2 realise the security under the Security Agreements, if necessary; and
 - 1.2.3.3 pay to each Secured Creditor, in accordance with this Guarantee given to it and in the order of the Pre-Enforcement Priority of Payments prior to delivery of an Enforcement Notice or Post-Enforcement Priority of Payments after delivery of an Enforcement Notice, as the case may be, the amounts of its claim.

2. Definitions

- 2.1 The Common Terms Agreement signed by, among others, the parties to this Guarantee (other than the Noteholders) (as such document may be amended, novated or substituted from time to time in accordance with its terms) is expressly and specifically incorporated into this document and, accordingly, the expressions defined in, and the terms and provisions of the Common Terms Agreement (as so amended, novated or substituted) shall, except where the context otherwise requires and save where otherwise defined or provided for in this document, have the same meanings in this document and shall form part of this document.

2.2 In this document, the term "**this Guarantee**" shall mean the guarantee embodied in this document, as amended, novated or substituted from time to time in accordance with its terms.

3. Stipulation

3.1 This Guarantee, on acceptance by the first Secured Creditor in terms of clause 3.1.1, constitutes a stipulation in favour of each of the Secured Creditors and shall be deemed to have been accepted by each of them and to constitute a binding agreement with each of them (notwithstanding that the Secured Creditors shall not have executed this document) as follows:

3.1.1 by each of the Secured Creditors other than Noteholders, upon the execution of the Transaction Document to which such Secured Creditor is a party; and

3.1.2 by the Noteholders upon the issue or transfer of the Notes to such Noteholders, as the case may be.

3.2 On the Date of Signature of this Guarantee, the Security SPV shall deliver the original signed Guarantee to the Manager which has, in accordance with the undertaking annexed to this Guarantee as **Schedule 1**, undertaken to hold such original Guarantee on behalf of the Secured Creditors and to make certified copies of this Guarantee available to the Secured Creditors upon written request by the Secured Creditors, in accordance with such undertaking.

3.3 By signing this Guarantee the Security SPV accepts the benefit of the stipulations in its favour in the Terms and Conditions and binds itself to the terms of the Terms and Conditions, in so far as the Terms and Conditions refer to the Security SPV.

4. Guarantee by Security SPV

The Security SPV hereby:

4.1 irrevocably guarantees to each Secured Creditor, subject to the Guarantee Conditions (as set out in clause 6.1 below), that if a Guarantee Event (as defined in clause 5 below) arises the Security SPV shall pay to each such

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Secured Creditor, in terms of the Priority of Payments, the amount owing to it by the Issuer and then due for payment; Aand

4.2 indemnifies each Secured Creditor and holds it harmless on demand against any loss, liability or cost suffered by that Secured Creditor if any obligation guaranteed by the Security SPV is or becomes unenforceable, invalid or illegal. The amount of that loss, liability or cost shall be equal to the amount which that Secured Creditor would otherwise have been entitled to recover had that obligation been enforceable, valid and legal.

5. Guarantee Event

5.1 A Guarantee Event shall be:

5.1.1 in the case of a Noteholder:

5.1.1.1 a vote for early redemption of the Notes by the Controlling Class Noteholders as contemplated in Condition 11.2.3.1 of the Terms and Conditions pursuant to the occurrence of an Event of Default under the Notes; or

5.1.1.2 a declaration by the Security SPV that the Notes are immediately due and payable as contemplated in Condition 11.2.3.2 of the Terms and Conditions pursuant to the occurrence of an Event of Default under the Notes;

5.1.2 in the case of any other Secured Creditor:

5.1.2.1 the occurrence of an Event of Default under the relevant Transaction Document concluded with that Secured Creditor; or


5.1.2.2 the Notes becoming immediately due and payable pursuant to the occurrence of any other Event of Default; or

5.1.3 the occurrence of an Issuer Insolvency Event.

5.2 The Security SPV shall not be required to take any steps to ascertain whether any Guarantee Event has occurred and until the Security SPV has actual knowledge of a Guarantee Event, it shall be entitled to assume that no Guarantee Event has taken place.

6. The Guarantee Conditions

- 6.1 The Security SPV acknowledges that this Guarantee is given on the basis that it constitutes a separate obligation enforceable against the Security SPV even though the Secured Creditors have not proceeded against or claimed payment from the Issuer.
- 6.2 The Security SPV undertakes in favour of the Secured Creditors that whenever it receives a demand for payment under this Guarantee from the Secured Creditors following the occurrence of a Guarantee Event, it will pay all amounts due and payable in terms of clauses 4.1 or 4.2 to the Secured Creditors, subject to clauses 6.3, 6.4 and 6.5.
- 6.3 The Security SPV shall not be liable under this Guarantee to pay the Secured Creditors an amount which in the aggregate exceeds the net amount which the Security SPV recovers and receives from the Issuer pursuant to the Issuer Indemnity or from assets realised pursuant to the Security Agreements.
- 6.4 The Security SPV shall only be obliged to make any payments in respect of this Guarantee, if, and to the extent that, it has recovered and received money from the Issuer pursuant to the Issuer Indemnity or from assets realised pursuant to the Security Agreements to make such payments.
- 6.5 Notwithstanding anything to the contrary herein provided but subject to the provisions of clauses 6.3 and 6.4, the Security SPV shall, out of the amount recovered and received pursuant to the Issuer Indemnity or realised pursuant to the Security Agreements, pay the Secured Creditors in the sequence set out in the Pre-Enforcement Priority of Payments prior to delivery of an Enforcement Notice or Post-Enforcement Priority of Payments after delivery of an Enforcement Notice, as the case may be, in the same manner as the Issuer would in the ordinary course and pursuant to the relevant Transaction Documents, have paid each Secured Creditor.
- 6.6 Subject to clause 6.7, the Security SPV undertakes to enforce the remedies available to it under the Issuer Indemnity and Security Agreements, and such other remedies as may be available to it at law, promptly upon any claim being made upon it in terms of this Guarantee; provided that the Security SPV is not obliged to take any action (including the exercise of any right, power,

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discretion or obligation) until the Secured Creditors, or the relevant Secured Creditor, as the case may be, place/s it in funds equivalent to the amount which the Security SPV determines may become payable by it in respect of any liabilities, costs or expenses which will or may arise from the Security SPV taking that action, or it is indemnified by the Secured Creditors, or the relevant Secured Creditor, as the case may be, to its reasonable satisfaction, in a form acceptable to it, in respect of any such liabilities, costs or expenses.

- 6.7 Without limiting its rights, powers and discretions, the Security SPV will not be required to exercise any right, power or discretion in terms of this Guarantee, the Issuer Indemnity and/or Security Agreements without the specific written instructions of the Secured Creditors (which in the case of the Noteholders, shall be given by Special Resolution of the Controlling Class) or the relevant Secured Creditor, as the case may be. If more than one Secured Creditor claims under the Guarantee, then the instructions of the Noteholders shall prevail. If there are no Noteholders, then the instructions of the Secured Creditors ranking highest in the relevant Priority of Payments shall prevail.
- 6.8 The Security SPV may engage and pay for (using the funds obtained pursuant to clause 6.6) the advice or services of any lawyers, accountants or other experts whose advice or services may seem to the Security SPV to be reasonably necessary in relation to any of the provisions of any Transaction Document, act or rely in good faith upon the opinion or advice of or any information obtained from any lawyer, accountant, valuer, surveyor, broker, auctioneer or other expert of recognised standing commissioned by the Security SPV, and the Security SPV shall not be responsible for any loss occasioned or arising by so acting or relying.
- 6.9 The Security SPV will have no liability to any Secured Creditor in respect of any thing done or omitted to be done in good faith and at the direction, or with the approval, of the Secured Creditors or the relevant Secured Creditor, as the case may be ("**Specified Conduct**"), and the Secured Creditors jointly and severally indemnify the Security SPV, its directors, officers and agents for any liabilities to any person so incurred by the Security SPV in respect of any Specified Conduct, *pro rata* to the aggregate amounts due and payable under the Transaction Documents by the Issuer to the Secured Creditors (in the case of a Guarantee Event referred to in clause 5.1.1 or 5.1.3) or the relevant


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Secured Creditors (in the case of a Guarantee Event referred to in clause 5.1.2), as the case may be.

- 6.10 If the amount recovered and received by the Security SPV from the Issuer in terms of the Issuer Indemnity or realised by it pursuant to the Security Agreements is insufficient to pay all the Secured Creditors, creditors ranking prior to others in the relevant Priority of Payments shall be paid first.
- 6.11 The rights of the Secured Creditors under this Guarantee are in addition to and not diminished or otherwise affected by any other rights under the Transaction Documents or provided by law.
- 6.12 Any settlement or discharge given by the Secured Creditors to the Security SPV in respect of the Security SPV's obligations under this Guarantee or any other agreement reached between the Secured Creditors and the Security SPV in relation to this Guarantee shall be, and be deemed always to have been, void if any act on the faith of which the Secured Creditors gave the Security SPV that settlement or discharge or entered into that agreement is subsequently voided by or in pursuance of any provision of law.
- 6.13 On signature of this Guarantee, the Security SPV shall be, and shall remain, bound to the full extent of this Guarantee, which shall at all times be fully and immediately enforceable, despite:
- 6.13.1 any of the obligations of the Issuer in respect of amounts owing to any Secured Creditors under the Transaction Documents or any security granted by the Issuer or any other person in respect of such amounts owing, being or becoming illegal, invalid, unenforceable or ineffective in any respect;
- 6.13.2 any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Issuer or the Security SPV or any other person;
- 6.13.3 the Issuer being deregistered, being placed in liquidation or wound up, being placed under judicial management (whether provisionally or finally), or otherwise becoming subject to any other legal liability or to any law for the benefit or assistance of debtors and/or creditors, or entering into or becoming subject to any scheme of arrangement or compromise;

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- 6.13.4 any security contemplated in any of the Security Agreements not being obtained or protected or being released or ceasing to be enforceable or ceasing to be held for any other reason;
- 6.13.5 the obligations of the Issuer or the Security SPV to the Secured Creditors under the Transaction Documents being varied or novated, whether by agreement, operation of law or otherwise;
- 6.13.6 any amendment (however fundamental) or replacement of any Transaction Document or any other document or security;
- 6.13.7 the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, the Issuer or any other person; or
- 6.13.8 any other cause which, but for the provisions of this clause, would or might have the effect of terminating, discharging or in any other manner whatsoever affecting any of the Security SPV's obligations under this Guarantee.
- 6.14 The Security SPV undertakes, in respect of any claim arising out of this Guarantee, not to raise the defence that there is no cause (ie reasonable basis) for the granting of this Guarantee.
- 6.15 This Guarantee is a continuing security and shall remain in force notwithstanding any fluctuation in or extinction for any period whatsoever of any amounts owing to the Secured Creditors by the Issuer or any intermediate payment of any of such debts. This Guarantee shall continue to apply to the remaining balance of the amounts owing to the Secured Creditors by the Issuer until such amounts have been finally, unconditionally and irrevocably extinguished in full.
- 6.16 If any payment or other performance which has had the effect of reducing or discharging the Security SPV's liability under this Guarantee is wholly or partly set aside, or refunded by agreement, after the Security SPV's release from this Guarantee, the Security SPV's liability for the indebtedness reduced or discharged by the payment or other performance shall be reinstated at such time as if such payment or performance had not been made.

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- 6.17 The Security SPV waives any right that it may have to first require any Secured Creditor to make any demand of the Issuer, to proceed against or claim payment from the Issuer or any third party, to take action or obtain judgment in any court against the Issuer or to make, file or prove any claim in the winding-up or dissolution of the Issuer before claiming under this Guarantee.
- 6.18 The Security SPV acknowledges that its obligations under this Guarantee are principal obligations and renounces any benefits to which it may be entitled in law as a result of this Guarantee including, without limitation, the benefits of division, excussion, cession of actions, revision of accounts and no value received. The Security SPV acknowledges that it is fully aware of the meaning and effect of those benefits.
- 6.19 The Security SPV shall not be entitled to revoke this Guarantee before the obligations of the Issuer to the Secured Creditors in terms of the Transaction Documents have been finally, unconditionally and irrevocably extinguished in full.
- 6.20 The provisions of this Guarantee shall not limit any liability on the part of the Security SPV to Secured Creditors for any loss occasioned by or arising from the Security SPV's dishonesty, negligence or breach of contract.
- 6.21 This Guarantee is given to each Secured Creditor on the basis that each such Secured Creditor has expressly agreed, in the Transaction Document to which such Secured Creditor is a party, to the subordination, limited recourse, limited enforcement and non-petition provisions in relation to its claims against the Issuer and/or the Security SPV.

7. Expenses

- 7.1 All legal and other costs and expenses which the Security SPV requires, expends or incurs in taking action under this Guarantee (including, without limiting the generality of the foregoing, the amounts determined by the Security SPV in accordance with the proviso to clause 6.6 and any further costs and expenses incurred by the Security SPV in claiming under the Issuer Indemnity and in realising the property pursuant to the other Security Agreements) shall:

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- 7.1.1 if a Guarantee Event contemplated in clauses 5.1.1 or 5.1.3 occurs, be borne by the Secured Creditors, *pro rata* to the aggregate amounts due and payable by the Issuer to the Secured Creditors under the Transaction Documents; and
- 7.1.2 if a Guarantee Event contemplated in clause 5.1.2 occurs, be borne by the relevant Secured Creditors, *pro rata* to the aggregate amounts due and payable by the Issuer to the relevant Secured Creditors under the Transaction Documents.
- 7.2 Each Secured Creditor agrees that the Security SPV shall be entitled to set off any amounts owed by it to the Security SPV in respect of the amounts referred to in clause 7.1 against the amount recovered and received by the Security SPV pursuant to the Issuer Indemnity and other Security Agreements, and due and payable to such Secured Creditor in terms of this Guarantee.

8. Amendment



No amendment to this Guarantee may be effected unless in writing and signed by or on behalf of the Security SPV and:

- 8.1 approved by a Special Resolution of each Class Noteholders; and
- 8.2 approved in writing by each of the Secured Creditors (other than the Noteholders).

9. Notices

For the purposes of this Guarantee:

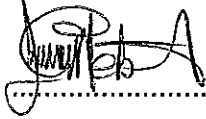
- 9.1 all notices to Noteholders shall be given in the manner contemplated in Condition 17 and the provisions of Condition 17 shall apply *mutatis mutandis* to the giving of such notice; and
- 9.2 all notices to a Secured Creditor (other than a Noteholder) shall be given in the manner contemplated in the relevant Transaction Document and the relevant provisions of the relevant Transaction Document shall apply *mutatis mutandis* to the giving of such notice.

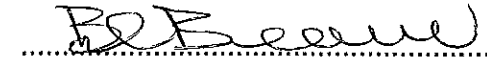
 

Signed at Gunninghill on 13 April 2006.

Witness:

for **Nqaba Finance 1 Security SPV
(Proprietary) Limited**


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.....
duly authorised thereto

SCHEDULE 1

Nqaba Finance 1 (Proprietary) Limited
Megawatt Park
Maxwell Drive
Sunninghill 2157

Fax: (011) 800 3386

Attention: Trevor Myburgh

Nqaba Finance 1 Security SPV (Proprietary) Limited
c/o Steinway Trustees (Proprietary) Limited
The Manor House
14 Nuttall Gardens
Morningside, Durban 4001

Fax: (031) 312 2866

Attention: Dave Gibbon / Clive Beaver

Dear Sirs

Guarantee issued by Nqaba Finance 1 Security SPV (Proprietary) Limited in favour of the Secured Creditors (the "Guarantee")

We refer to the Guarantee. Capitalised terms not specifically defined in this undertaking shall have the meaning assigned to such terms in the Guarantee.

We hereby undertake in favour of each of the Secured Creditors to receive and hold in custody the original signed Guarantee to be delivered to us by the Security SPV on the Date of Signature of the Guarantee. This undertaking shall not imply any relationship of trust, duty of care or fiduciary obligation on our part to take any action in relation to the Guarantee or any other Transaction Document.

We undertake, upon the written request by any Secured Creditor and at the cost of such Secured Creditor, to make available to the Secured Creditor, a certified copy of the Guarantee within 2 Business Days of receipt of such written request.

Upon the termination of the Guarantee in accordance with its terms and conditions, we shall deliver the original Guarantee to the Security SPV.

Upon termination of our appointment as Manager, we shall deliver the original Guarantee to any substitute manager appointed in terms of the Transaction Documents.

This undertaking constitutes an irrevocable stipulation in favour of the Secured Creditors and shall be deemed to have been accepted by them, *mutatis mutandis*, in the manner envisaged in clause 3 of the Guarantee.

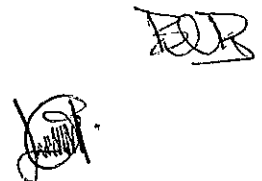




Yours faithfully

**Absa Corporate and Merchant Bank, a division of Absa Bank Limited, in its
capacity as Manager**

Date:

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